THE HON'BLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No.1611 of 2005

Between:

M.Venkateswara Rao.

.. PETITIONER

and

The Sub-Divisional Police Officer and others.

.. RESPONDENTS

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ORDER:

The petitioner seeks to issue a Writ of Certiorari to quash the

proceedings initiated against him in S.C.No.20 of 2002 on the file of District and Sessions Judge, Ongole, Prakasham District and call for the report of the Superintendent of Police, Ongole-5th respondent in C.No.309/S.P.CAMP/2001, dated 12-10-2001, sent to the 4th respondent and to declare the action of respondents 1 to 5 in not taking any action against the 6th respondent, even though it was found that he foisted a false case against the petitioner by forcibly obtaining complaint from the victim Kumari Kothuru Lakshmi Supriya Rao, inspite of repeated representations made by the petitioner, victim and her mother i.e., the 7th respondent, as illegal and arbitrary and consequently direct respondents 1 to 5 to take appropriate action against the 6th respondent immediately in the interest of justice.

It is the case of the petitioner that the 6th respondent falsely implicated him by forcibly obtaining complaint from Lakshmi Supriya Rao, who is the daughter of the 7th respondent, on 08-11-2000. Based on which, a case in Cr.No.298 of 2000 was registered and the investigation has been made by the 6th respondent. It is stated that in respect of the complaint filed by one Sri K.Madhava Rao about missing of his daughter, a case in Cr.No.292 of 2000 was registered and in that connection, the petitioner and the said Lakshmi Supriya Rao were brought to the police station illegally and a false case has been foisted against the petitioner by forcibly obtaining complaint from the said Lakshmi Supriya Rao. The petitioner was apprehended by the 6th respondent on 08-11-2000 and he was physically assaulted and tortured by the police and after keeping him in the police custody for more than 24 hours, he was produced before the III Additional Munsif Magistrate, Ongole, on 10-

11-200. The petitioner showed the injuries suffered by him in the hands of the 6th respondent to the learned Magistrate. The learned Magistrate directed the police to produce the petitioner before the Government Doctor. Accordingly, he was produced before the Doctor at Government Head Quarters, Ongole, wherein he was treated as an inpatient for 10 days. Thereafter, he was shifted to the Government General Hospital, Guntur for further treatment and subsequently, he was discharged. Thereafter, he was in judicial custody from 20-11-2000 to 03-01-2001.

It is further stated that the 6th respondent was having close association with the brother-in-law of the petitioner namely one Miriyala Srinivasulu and he invested certain amounts in the Vaishnavi Group of Finance, which is located at V.R.Complex, Ongole in the benami name of Pattella Raghunadh. His brother-in-law and the 6th respondent are the partners in the said firm. There are some disputes in between the 6th respondent and the brother-in-law of the petitioner and to take revenge against the brother-in-law of the petitioner, he was falsely implicated in the rape case. He submitted several representations to the higher authorities to enquire into the matter and take appropriate action against the 6th respondent.

It is further stated that in fact Lakshmi Supriya Rao, who gave complaint in Cr.No.298 of 2000, appeared before the learned Additional District and Sessions Judge, Ongole on 02-01-2001 and submitted a written representation stating that the 6th respondent forced her to give a false complaint against the petitioner. In the said representation, it is also stated that the 6th respondent beat her and forced her to give complaint against the petitioner under the threat that she would be implicated in a murder case, if

she did not give complaint against the petitioner. It is further stated that police are continuously harassing her and she was kept in the police station for three days. Therefore, she was forced to give a false complaint against the petitioner. In fact, on 27-02-2004, the said Lakshmi Supriya Rao committed suicide and her mother-7th respondent gave a complaint to the police and the same was registered as a case in Cr.No.41 of 2004. It is stated that on the repeated representations made by the petitioner, higher authorities directed the 5th respondent to enquire into the matter and submit a report. Accordingly, the 5th respondent conducted a detailed enquiry and sent a report in C.No.309/S.P.CAMP/2001, dated 12-10-2001, to the 4th respondent, in which it was stated that the petitioner was falsely implicated in the case and the 6th respondent was having disputes with his brother-in-law and the 6th respondent is running finance business in the benami name. Basing on the said report, no action has been taken against the 6th respondent. It is stated that registration of the case against the petitioner for the offences punishable under Section 376 IPC and Section 3(i)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for short "the Act") is illegal and arbitrary, as the case is investigated by the police officers below the rank of a Deputy Superintendent of Police. It is further stated that in fact the 7th respondent also died during pendency of the Sessions Case. To prove the guilt of the 6th respondent, no material witness is available and, therefore, the matter requires to be investigated by the CBI or CBCID.

A counter has been filed by the Sub-Divisional Police Officer, Ongole-1st respondent stating that one Kumari Kothuru Lakshmi Supriya Rao, D/o.Sudhakar Rao lodged a complaint with Ongole Taluk Police Station on

08-11-2000 against the petitioner alleging that he committed rape on her on 06-05-2000 at 11.30 hours in his Telephone Booth situated at Ratnam Towers, Bypass Road, Ongole. Basing on which, a case in Cr.No.298 of 2000 was registered against the petitioner for the offence punishable under Section 376 IPC on 08-11-2000 by the incharge Sub-Inspector of Police, Ongole Taluk Police Station. In fact, the 6th respondent herein took up investigation in the said crime and examined as many as five witnesses. During the course of investigation, the 6th respondent came to the conclusion that the petitioner committed rape on the victim and therefore, he arrested the petitioner on 09-11-2000 and produced him before the Court on 10-11-2000. During the course of investigation, it came to light that the victim belongs to Scheduled Caste. Therefore, the 6th respondent filed a memo before the III Additional Munsif Magistrate, Ongole, on 15-11-2000 seeking to add Section 3(i)(x) of the Act. Accordingly, the learned Magistrate after giving permission to add Section 3(i)(x) of the Act, transferred the case to the then Sub-Divisional Police Officer, Ongole, for investigation. Accordingly, the then Sub-Divisional Police Officer, Ongole, by name Sri K.Madhava Rao investigated the case and after completing investigation, charge-sheet has been filed against the petitioner for the offences punishable under Section 376 IPC and Section 3(i)(x) of the Act. It is admitted that the petitioner was produced before the Additional Munsif Magistrate, Ongole, with regard to Cr.No.298 of 2000 and the learned Magistrate directed the police to produce him before the Government Doctor and accordingly he was produced before the Doctor at Government Headquarters Hospital, Ongole, wherein he was admitted as an inpatient and from there he was shifted to Guntur for further treatment. Subsequently, he was in judicial custody from

20-11-2000 to 03-11-2001.

It is further stated that the written requisition submitted by Lakshmi Supriya Rao, who was the complainant in Cr.No.298 of 2000, before the Additional District and Sessions Judge, Ongole, on 02-01-2001, was not brought to the notice of the then Sub-Divisional Police Officer, Ongole or other respondents. However, it is stated that on the representation of the petitioner, dated 02-01-2001, confidential enquiry has been ordered against the 6th respondent. During the enquiry, it was revealed that the 6th respondent was having some investments and business transactions with the relatives of the petitioner and there are also disputes with the relatives of the petitioner. To that effect, a report was also submitted against the 6th respondent to the 4th respondent, who is the competent authority to initiate action against the 6th respondent. Accordingly, the 6th respondent was awarded punishment by the Inspector General of Police, Guntur, reducing time scale of pay by two stages for one year without effect on future increments and pension through proceedings in C.No.2248/C2/05, dated 20-12-2006.

The 1st respondent admitted the allegations made against the 6th respondent stating that an enquiry was conducted against the 6th respondent, wherein it was found that there are disputes between the brother-in-law of the petitioner and the 6th respondent. The then Sub-Divisional Police Officer completed investigation and laid charge-sheet and it is pending for trial in S.C.No.20 of 2002. No prejudice is caused to the petitioner, even if the Sub-Divisional Police Officer investigated the case, without the authorization of the Superintendent of Police.

Insofar as the contention of the petitioner that he has not committed any offence is concerned, in the medical certificate issued by the medical officer it was stated that no evidence of actual sexual intercourse was noticed in the examination of the victim and the police sent two cotton swabs, hair clippings and two glass slides with dried smears to the Forensic Science Laboratory, Hyderabad and a report was received that no blood is detected on items 1 to 6 and spermatozoa are not detected and no foreign hair is detected in the said items. It is stated that though Wound Certificate does not disclose the evidence of actual sexual intercourse at the time of examination of victim, at the same time the then Sub-Divisional Police Officer, Ongole, addressed a letter, dated 22-12-2000 for clarification from the Doctor to the effect that there can be a rape without rupture of Hymen and the Doctor gave clarification that there can be a rape without Hymen being ruptured. On the said clarification, the investigating officer filed the charge-sheet against the petitioner for the offences punishable under Section 376 IPC and Section 3(i)lx) of the Act.

Having regard to the facts and circumstances of the case, I am of the opinion that when the charge-sheet had already been filed, it is for the trial judge to consider the report submitted by the 5th respondent against the 6th respondent with regard to the torture committed to the petitioner by the 6th respondent and also with regard to the illegal business transactions on the part of the 6th respondent. If the 6th respondent commits any criminal action, he is liable to be punished and, therefore, it is open for respondents 1 to 5 to take appropriate action against the 6th respondent without there being any complaint against the 6th respondent, as it is open for them to suo motu

register a case based on the enquiry report.

Insofar as the complaint filed by the 7th respondent is concerned, it is for the police to take appropriate action in accordance with law. However, all these defences have to be taken to prove the innocence of the accused in S.C.No.20 of 2002. Therefore, in the absence of any material evidence, I am of the opinion that it is not just and proper to quash the proceedings initiated against the petitioner in S.C.No.20 of 2002.

Accordingly, the writ petition is disposed of giving liberty to the petitioner to summon the report, dated 12-01-2001, submitted by the 5th respondent to the 4th respondent and mark the same as exhibit in S.C.No.20 of 2002 on the file of District and Sessions Judge, Ongole, Prakasham District, apart from the medical reports with regard to the treatment taken by the petitioner on account of the torture and ill-treatment made by the 6th respondent. Further, respondents 1 to 5 are also directed to take appropriate action against the 6th respondent, if the said report discloses any offence punishable under any relevant provisions of law against the 6th respondent. There shall be no order as to costs.

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13-08-2007

Prv